

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1232 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

HEIRS OF J H DABHI-PREMILABEN H DABHI

Versus

RAVINDRAKALA KANTIBHAI

Appearance:

MR PM THAKKAR for Petitioners
NOTICE SERVED for Respondent No. 1
MS VASUBEN P SHAH for Respondent No. 3, 4

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 24/04/2000

ORAL JUDGEMENT

#. The present revision application has been filed by the original applicants of Civil Misc.Application No.15/81. The said application was given by the present petitioners under Order 9, Rule 13 of the Civil Procedure

Code for setting aside the decree for possession passed in Civil Suit No.11/78. The learned Civil Judge (Junior Division), Khambhat by his order dated 15.1.1985 dismissed the said application, and therefore, the present petitioners had filed appeal from order being Misc.Appeal No.26/85 before the District Court, Kheda at Nadiad. The aforesaid appeal was also dismissed by the learned 2nd Extra Assistant Judge, Nadiad on 16.7.1986. The aforesaid order of the appellate court is impugned in the present revision application.

#. The respondents herein were the original plaintiffs of Regular Civil Suit No.11/78. The said suit was filed by the plaintiffs against the original tenant - deceased Himatlal Punambhai Dabhi for getting the decree for possession on the ground of arrears of rent. It seems that, advocate of the original deceased tenant had given no instruction purshis, though of course, the written statement was filed on 19.4.1978. Thereafter, there was an exparte decree on 31.7.1979. The defendant, thereafter, gave the application on 30.8.1979 being Application No.39/79 under Order 9, Rule 13 of the Civil Procedure Code for setting aside the exparte decree. The aforesaid application was dismissed for default on 7.5.1981. Meanwhile, the original defendant - Himatlal died on 1.6.1981. Thereafter, his heirs, that is, present petitioners herein moved an application being Application No.15/81 on 24.6.1981 for setting aside the exparte decree by resorting the Order 9, Rule 13 of the Civil Procedure Code. The said application was rejected by the trial court on 15.1.1985. The said order was carried in Appeal being Misc.Appeal No.26/85. The same was dismissed on 16.1.1986. Hence, the present civil revision application.

#. At the time of hearing of this civil revision application, advocate for the respondents-Ms.K.J. Brahmbhatt on instructions from her clients states that, respondents have no objection if one more chance is given to the present petitioners to contest the suit and for that purpose, if exparte decree is set aside. However, the grievance of the respondents is that the defendants are interested in prolonging the litigation and that at no point of time, they showed any vigilance on their part to defend the suit. It is pointed out that, the suit in question is of 1978 and about 22 years have already been passed. If, the said suit is required to be proceeded on merits again, it may take considerable time. It is, therefore, requested that, in the facts and circumstances of the case, an appropriate directions for disposal of the suit as well as if any appeal is preferred by either

side against the decree of the trial court, necessary direction for disposal of the said appeal is also required to be given.

#. Mr.Kavina, learned advocate for the petitioners has also submitted that the petitioners have no objection if the time bound programme for disposal of the suit as well as even for disposal of the appeal which might be filed by either side is given so that this old litigation may come to an end within reasonable period.

#. Mr.Kavina, learned advocate for the petitioners has stated that, he has no objection if the petitioners are directed to pay reasonable amount of costs to the respondents since they have to suffer for no fault on their part. In view of the aforesaid, without going into the merits of civil revision application, I pass the following order by the consent of the parties.

#. The exparte decree passed in Regular Civil Suit No.11/78 by the learned Civil Judge (Junior Division), Khambhat on 31.7.1979 is set aside. The aforesaid suit is restored on the file of the learned Civil Judge (Junior Division), Khambhat. The learned Civil Judge (Junior Division), Khambhat is directed to proceed with the said suit on day to day basis. The said suit to be proceeded further from the stage of framing of the issues as I am told that issues have been framed by the learned trial Judge. The defendants shall be permitted to lead their evidence and if the plaintiffs want to submit their further evidence, they are also entitled to lead the same. However, the trial court will proceed on day to day basis for recording the evidence as well for hearing the arguments of the parties and in any circumstances, the suit must be decided by 31.8.2000. Both the sides, that is, plaintiffs and defendants may remain present before the learned Civil Judge (Junior Division), Khambhat on 4.5.2000 so that the trial court may not have to issue fresh summons to the parties again. After the aforesaid appearance of the parties, the trial court may fix the hearing of the suit.

#. Mr.Kavina, learned advocate for the petitioners, undertakes and assures this court that, his clients will not take any unreasonable adjournment from the trial court and will fully cooperate in disposal of the said suit by the aforesaid time. The learned trial court may also send the compliance report after disposal of the said suit to this court. Looking to the fact that, it is an old proceedings, both the side agreed before this court that, if an appeal against the decree of the trial

court is required to be preferred by either side, they will also cooperate in disposal of the said appeal and that the appellant of the said appeal will immediately submit the paper book at his own costs. It is, therefore, hoped that as and when such an appeal is filed by the aggrieved party, the appellate court may also make all efforts to see that the said appeal is disposed of as far as possible within a period of three months from filing of the same, so that, this old litigation may come to an end.

#. Ms. Brahmhatt states that, opponents original plaintiffs have agreed for sending the matter back by setting aside the ex parte decree with the hope that this old suit is decided at the earliest on merits. Therefore, I have given the aforesaid directions for disposal of the appeal also if such appeal is filed. Prima facie it seems that, the respondents have not shown their vigilance in the trial court at the time of pendency of the suit or even in pursuing the application filed under Order 9, Rule 13 of the Civil Procedure Code, I direct the petitioners to pay Rs.5,000/- (Rupees five thousand only) as costs of this litigation to the respondents. The aforesaid amount of costs is directed to be deposited in the trial court on or before 15.6.2000. R & P of Civil Suit No.11/78 be sent back to the court of Civil Judge (Junior Division), Khambhat forthwith so that there may not be any further delay on the aforesaid count. Rule is accordingly made absolute to the aforesaid extent. Writ of this order be sent to the trial court forthwith.

(P.B.Majmudar,J)
(pathan)